

1992

# State of Utah v. David Laird Hansen : Reply Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS  
BRIEF

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DOCKET NO.

920823

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff and Appellee,

vs.

DAVID LAIRD HANSEN,

Defendant and Appellant.

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Case No. 920823-CA

Priority No. 2

REPLY BRIEF OF DEFENDANT-APPELLANT

APPEAL FROM A CONVICTION OF LEAVING THE SCENE OF AN ACCIDENT,  
A CLASS A MISDEMEANOR; AND DRIVING ON SUSPENSION,  
A CLASS B MISDEMEANOR

APPEAL FROM THE DECISION OF THE HONORABLE JUDGE  
ROBERT J. SUMSION OF THE FOURTH JUDICIAL CIRCUIT COURT  
IN AND FOR UTAH COUNTY, STATE OF UTAH  
AMERICAN FORK DEPARTMENT

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**FILED**

Utah Court of Appeals

MAY 18 1993

  
Mary T. Noonan  
Clerk of the Court

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IN THE UTAH COURT OF APPEALS

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|--------------------------|---|--------------------|
| STATE OF UTAH,           | : |                    |
|                          | : |                    |
| Plaintiff and Appellee,  | : | Case No. 920823-CA |
|                          | : |                    |
| vs.                      | : |                    |
|                          | : |                    |
| DAVID LAIRD HANSEN,      | : | Priority No. 2     |
|                          | : |                    |
| Defendant and Appellant. | : |                    |

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SUMMARY OF THE ARGUMENT

The State makes several errors in its argument that the corpus delicti of the crime with which Mr. Hansen is charged was established prior to admitting Mr. Hansen's confession.

First is the State's contention that proof of identification is not required to establish corpus delicti. That is an overly broad generalization, which the United States Supreme Court denounced in Smith v. United States of America, 348 U.S. 147 (Oct. term 1954). Under the Smith rule, crimes which require the identity of the accused to be known in order for a crime to lie, should receive a higher level of protection than the general corpus delicti rule. That rule applies here.

Second, the state misunderstands the context of State v. Johnson, 821 P.2d 1150, 1162, wherein the court makes a general statement that the state is not required to show independent evidence "that the accused is the guilty agent." Johnson is a case that deals with the issue of whether proof of a crime is necessary to allow pre-crime inculpatory statements to be admitted. According to the Johnson court, the issue of what evidence is

necessary to prove a crime has been committed is a separate inquiry under the corpus delicti rule.

Third, the State misunderstands the legal meaning of the word "injury" in the corpus delicti rule, rendering their arguments legally impotent. The State erroneously substitutes a common medical meaning for the word "injury" in place of the technical legal meaning. The State believes that the "injury" component of the rule is satisfied by the head wound received by the accident victim. However, case law in this jurisdiction states that evidence must be presented that the "injury specified in the crime" occurred. The injury specified in the crime charged is the illegal leaving of an accident scene by a motor vehicle operator.

Finally, the State improperly accuses Mr. Hansen of an additional crime for the first time on appeal, the crime of illegally crossing the median strip of I-15. Mr. Hansen was neither charged nor tried for such a crime, and the trial court judge did not consider it in his decision. The State assumes the role of judge and jury, and asks the Court of Appeals to affirm Mr. Hansen's convictions on the basis of the purely speculative criminality embodied in a non-existent criminal charge.

It is prejudicial, and a violation of Mr. Hansen's constitutional rights to a fair trial and the due process of law, for the State to impute criminal guilt to Mr. Hansen without his having been charged or tried.

Because of the egregious faults in the State's argument and the failure of the State to provide independent, clear and

convincing proof that a crime was even committed, this conviction should be reversed.

#### ARGUMENT

"the state concedes that the there [sic] must be a showing by clear and convincing evidence, independent of the Defendant's confession, that the person who left the scene of the accident was the driver. That is because if it was the driver who was mortally injured, and it was the passenger who left the scene, there is no crime for which the passenger could be convicted. And thus, the criminal connection to the injury could not be established." (Brief of Plaintiff-Appellee, p.10)

This admission by Mr. Davis, the Deputy Utah County Attorney, is a concise and accurate restatement of the argument to which the Defendant adheres. The pivotal portion of the above statement is that "there must be a showing by clear and convincing evidence, independent of the Defendant's confession, that the person who left the scene of the accident was the driver."

The "clear and convincing" evidentiary standard, mentioned above, establishes the extent of the State's burden in proving that a crime has been committed before a confession can be admitted at trial. The reasoning used by the trial judge shows that the state failed to meet that burden.

In denying the Defendant's motion to dismiss, the trial court judge stated that he recognized that the question of the operator of the vehicle and the identity of the person committing the offense must be answered the same in order to convict. The judge had allowed the confession for purposes of identifying the operator, reasoning that sufficient corroborating evidence had been

presented and that the confession is what "makes the difference."  
(Trial Transcript at pg. 60)

However, the purpose of corroborative evidence is not merely to set up the confession so that the confession can then "make the difference." The Utah Supreme Court has rejected the argument that "independent corroborative evidence of the corpus delicti need only be consistent with and tend to 'confirm and strengthen the confession.'" (citation omitted) State v. Johnson, 821 P.2d 1150, 1163 (Utah 1991).

In the case at bar, the judge was clearly following the discredited theory that "corroborative evidence of the corpus delicti need only.. 'confirm and strengthen the confession.'" As mentioned in the preceding paragraph, State v. Johnson, 821 P.2d at 1163, makes it the law in this state that such evidence does not meet the clear and convincing standard. The State's own summary of the evidence presented shows that it did not accomplish anything more than to "confirm and strengthen" Mr. Hansen's confession, and that the real basis of the corpus delicti was the confession itself.

The State summarized the evidence that they presented at trial as follows:

"The evidence indicates that the vehicle rolled once and came to rest on the passenger side, that the injured person was trapped underneath the passenger side and had received mortal injuries to the head, that blood was found where the passenger window of the vehicle came to rest, and that the other occupant of the vehicle exited from the driver's window shortly after the accident." (Trial Transcript at p. 10)

The Defendant stipulates to those facts, but asserts that those facts can only serve to "confirm and strengthen the



confession." None of them provide independent, clear and convincing evidence that a crime was committed, because none of those facts clearly show the identity of the driver.

The State asserts that it is "not required to show independent evidence 'that the accused is the guilty agent.'" [Brief of Plaintiff-Appellant, p. 8; quoting State v. Johnson, 821 P.2d 1150, 1162 (Utah 1991)] In order for the State's argument to succeed, that assertion must be true without exception. However, it is the position of the defendant that an exception exists in cases where it cannot be shown that a crime has been committed without identifying the accused. The exception was recognized and created by the United States Supreme Court.

In Smith v. United States, 348 U.S. 147, 154, 99 L.ed. 192, 199, 75 S. Ct. 194 (1954), the Court addressed the corpus delicti rule in the context of a tax fraud case where the identity of the taxpayer was an element of the cause of action. The Court recognized that:

"as to this crime, it cannot be shown that the crime has been committed without identifying the accused. Thus we are faced with the choice of either applying the corroboration rule to this offense and according the accused even greater protection than the rule affords to a defendant in a homicide prosecution, (string cite omitted), or of finding the rule wholly inapplicable because of the nature of the offense, stripping the accused of this guarantee altogether. We choose to apply the rule, with its broader guarantee, to crimes .... where the corroborative evidence must implicate the accused in order to show that a crime has been committed." Smith, 99 L.ed. 192, 199.

The case at bar is a crime where the "corroborative evidence must implicate the accused" as the operator of the vehicle or the

charges cannot stand. The only corroborating evidence presented at trial, other than the confession, merely tended to put someone in the car who was wearing clothes similar to clothes worn by Mr. Hansen the next day. [Trial Transcript at pp. 8, 14, 16, 18, 26, 28]

No direct evidence indicated that the similarly dressed person was the operator of the car. From the evidence presented, it is just as likely that the person was the passenger, and perhaps more likely considering that the victim was the owner of the car, not Mr. Hansen. [Trial Transcript at p. 40]

Even the Johnson rule, upon which the State bases its entire argument, is not as straightforward as the State makes it appear in its Brief. The quoted sentence from Johnson, stating that it is not necessary to show independently that the accused is the guilty agent, is immediately proceeded by footnote #8, in which the court distinguishes Johnson from cases where the issue is what quantum of evidence is necessary to prove a crime has been committed. The court states:

"We note that some confusion has arisen surrounding corpus delicti because the term has more than one use. This case involves the question of when proof of the crime is required to allow introduction of a defendant's confession. In another context, corpus delicti refers to evidence that the crime was committed." [Johnson at 1162, footnote 8.]

Johnson was an appellate case that examined the issue of whether statements against interest, made by the defendant before the crime was committed, should have been afforded the protection of the corpus delicti rule. [Johnson at 1163-1164] Therefore, carte blanche reliance on Johnson would be misplaced in the context

of the case at bar, because the case at bar does not involve any statements of Mr. Hansen made before the accident occurred. Rather, the issue is whether the state provided enough independent evidence that a crime was committed to allow the defendant's post-arrest confession to be admitted, where the state must prove the identity of the guilty agent to show that there was a crime.

Although the Smith rule should be dispositive in this case, other portions of the State's argument are seriously flawed. The State incorrectly applies the facts of the case to both elements of the corpus delicti rule.

The first element of the rule is that independent evidence must show that a "wrong, an injury, or a damage" has been done. [Johnson at 1162] The State claims that the injury prong of the rule is satisfied by "either the mortal injury received by the one occupant of the vehicle, or the leaving of the mortally injured man by the other occupant." [Brief of Plaintiff-Appellant, p. 9] The State confuses medical injury with legal injury.

However, State v. Knoefler, 563 P.2d 175, 176 (Utah 1977), quoted in Johnson at 1162, holds that the State must provide independent evidence that the "injury specified in the crime occurred, and that such injury was caused by someone's criminal conduct." (emphasis added) Mr. Hansen was not charged with causing the injury or death of the other occupant of the vehicle, and no citizen is under an affirmative duty to render aid to persons in need of medical attention. The injury specified in the crime charged was that a driver allegedly left the scene of an

injury accident without filing a report. In order to prove that such a crime occurred, the State must show which occupant of the car was the driver, something they have consistently failed to do.

Not only does the State's argument fail to establish the first prong of the corpus delicti rule, the second prong is equally unfulfilled by the reasoning of the State. The State knows that if they cannot independently prove that Mr. Hansen was the driver of the vehicle, then they cannot prove that the "injury" was caused by someone's criminal conduct. Accordingly, the State has attempted to manufacture a very dubious "criminal conduct" which they hope to attribute to Mr. Hansen without having to adhere to the rule that the scope of review on appeal is limited to the record created by the court below.

The State claims that because the vehicle rolled across the median, Mr. Hansen is guilty of criminally "operating" a vehicle "over, across or within" a the median of a divided highway, as prohibited by Utah Code Annotated, § 46-6-63.10(2). This reasoning again shows the lack of understanding which the State has in regards to the corpus delicti rule. Even if Mr. Hansen stood convicted of this crime, it would not provide corpus delicti for any other crimes charged at trial. But first we must examine the validity of the State's self-serving prognostication that conviction for such a crime would be inevitable.

In the first place, a vehicle that is out of control is not being "operated" by the driver. Second, commission of a crime requires a criminal mens rea. The fact that the incident was an

automobile "accident" necessarily eliminates the possibility of criminal intent in crossing the median -- it was not intentional, it was accidental. Third, the State has not shown that it was Mr. Hansen that operated the vehicle in the median -- so once again, no criminal conduct can be imputed to him. Finally, the Defendant has not been able to find any case law where a driver in a roll-over accident was charged with illegally operating a vehicle in the median of a divided highway.

Even if the State could prove that Mr. Hansen is guilty of crossing the median, the corpus delicti has not been established for any other crime which arises out of the same factual circumstances. Utah case law does not address this specific issue, but case law from other jurisdictions mandates independent evidence for each crime charged. In a 1986 murder-rape case, the Illinois Court of Appeals ruled that "independent evidence of one offense does not allow use of a defendant's confession for all crimes for which the defendant is charged." People v. Kokoraleis, 501 NE 2d 207, 227 (Ill. App. 1986).

Finally, the defendant strongly protests the illegitimate attempt of the State to impute guilt to Mr. Hansen for a criminal charge which was never even mentioned at the trial level. Mr. Hansen was not charged with operating a vehicle in the median, was not tried, did not have a chance to defend himself, had no notice that the State would accuse him on appeal, and cannot properly prepare an appeal based on non-existent criminal charges and suppositional reasoning as to what the trial court judge would have

done had he had the chance to consider this entirely new accusation. The appeal must be based on the record below, not imaginary convictions.

It is unthinkable that the State could be allowed to bring additional criminal charges for the first time on appeal. To actually base a substantial portion of the State's argument on an opaquely related crime that "very well could have been charged," but was not, shows the flawed character of the State's theory and analysis. If convictions could be affirmed by raising criminal charges for the first time on appeal, and skipping the trial process altogether, the financial cost to the public would certainly be lowered, but the price we all would pay in lost constitutional freedoms would be unbearable.

As a matter of public policy, there are two reasons that the convictions of Mr. Hansen should be overturned. First, if the State is allowed to secure a conviction without independently identifying Mr. Hansen as the driver, the corpus delicti rule will be diluted, "stripping the accused of this guarantee altogether." If it cannot be shown that a crime has been committed without identifying the accused, the State must not be allowed to convict citizens primarily on the basis of a confession. The corpus delicti rule was established to make sure that people are not convicted on the strength of false confessions.

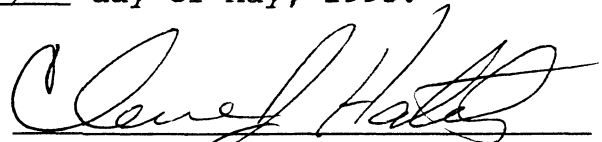
Second, the Court should send a signal to County Attorneys that result oriented procedures will not be tolerated. One of the secondary reasons for the corpus delicti rule is to force

prosecutors to do thorough investigations and call the witnesses necessary to establish that a crime was committed. This is doubly important in factual scenarios where the state must identify the accused in order to show that a crime was committed. If the State is allowed to prosecute and convict anybody that comes forward and confesses to a crime under such factual circumstances, then no corpus delicti protection exists for those people.

CONCLUSION

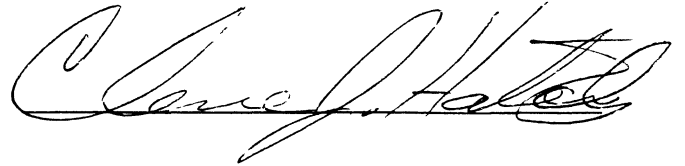
For the foregoing reasons, the Defendant respectfully requests that the Trial Court's conviction be reversed in this matter.

RESPECTFULLY SUBMITTED this 17 day of May, 1993.

  
Cleve J. Hatch  
Attorney for Defendant-Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed 2 true and correct copies of the foregoing Reply Brief of Defendant-Appellant to Benjamin T. Davis, Deputy Utah County Attorney, 100 East Center, Suite 2100, Provo, Utah 84606, this 17 day of May, 1993.

A handwritten signature in cursive script, appearing to read "David J. Hulse", written in black ink.